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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Authorization of
Norfolk Southern Railway To Install
Active Warning Devices at a Grade
Crossing in Fulton County.

: Case No. 16-1413-RR-FED

: **APPLICATION FOR REHEARING**

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Norfolk Southern Railway Company (“NSRC”) respectfully requests a limited rehearing in the instant case – not with respect to the Commission’s recent granting of NSRC’s variance request of April 24, 2017, but rather, with respect to the stated post-installation obligations placed upon NSRC.

A memorandum in support is attached.

Respectfully submitted,

EASTMAN & SMITH LTD.

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MEMORANDUM IN SUPPORT

As PUCO Staff notes in its related Memo of August 16, 2018 (at p. 4) this is a “very complex intersection,” and absent the relocation of the City’s water line (which appears to necessitate the acquisition of private right-of-way), “this project cannot be built as originally designed.”

In light of same, toward improving safety at the intersection, NSRC and the ORDC collaborated toward NSRC’s variance request of April 24, 2017 – specifically, in lieu of placing a cantilever and gate mechanism in the northeast quadrant of the crossing (which placement is precluded by the above-referenced utility conflict), NSRC – again, with full support of the ORDC – proposed to construct a pair of mast-mounted left-hand flashing lights in the southeast quadrant.

Via Entry of November 6, 2019, the Commission granted NSRC’s variance request. In light of same, NSRC intends to proceed with related construction, and understands that the ORDC remains committed to providing related federal funding.

NSRC's concern, thus necessitating the instant application for rehearing, is with respect to the post-installation obligations purported to be placed upon NSRC pursuant to the Commission's Entry – specifically, as set forth at ¶22: “That, [NSRC] monitor traffic at the crossing for two years after completion of construction, and then file in this docket an engineering analysis regarding the efficacy of the pair of mast-mounted left-hand flashing lights in the southeast quadrant of the crossing for alerting drivers to the presence of an oncoming train.”

NSRC requests reconsideration of the post-incident installation obligations, on a number of fronts. First, NSRC is aware of no statute, administrative provision, or case law which directly authorizes the Commission to order a railroad to “monitor” a crossing post-installation of safety devices, or to conduct an engineering study regarding the efficacy of a particular set of safety devices that the Commission has already approved for installation. Second, even assuming authority, there appears to be no readily-available funding mechanism, since the related ORDC encumbrance will be closed, to NSRC's understanding, in or about late June of 2020. Third, notably, the obligations are simply unnecessary. On this end, the proposed island circuit extends through the roadway and 50' from either edge, and the warning devices will activate only when this defined area of the track is occupied by rail equipment that shunts the track. NSRC will operate its trains per related operating rule and, in the event it becomes aware of any concerns at this crossing, then NSRC would request a further diagnostic, together with all interested parties.

In light of same, NSRC respectfully requests a rehearing with respect to the Commission's Entry of November 6, 2019 – not with respect to the Commission's granting of the April 24, 2017 variance request (which, again, both NSRC and the ORDC remain committed to), but rather, with respect to the post-installation obligations placed upon NSRC.

Respectfully submitted,

EASTMAN & SMITH LTD.

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PROOF OF SERVICE

A copy of the foregoing *Application for Rehearing* was filed electronically with the Commission this 6th day of December, 2019. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ D. Casey Talbott

Attorney for Norfolk Southern
Railway Company

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Case No(s). 16-1413-RR-FED

Summary: Application Application for Rehearing electronically filed by Mr. D. Casey Talbott on behalf of Norfolk Southern Railway Company